



State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Financial Institutions Bureau
Patrick M. McQueen, Commissioner

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November 23, 1998

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Dear #####:

This is in response to your letter dated October 20, 1998, requesting the Bureau's guidance on the proposed establishment by ##### (hereinafter #####) of cash dispensing terminals (CDTs) in Michigan.

proposes to establish the CDTs either through a wholly owned non-bank subsidiary of #####, or through a wholly owned non-bank subsidiary of #####, which is itself a wholly owned subsidiary of _____. ##### is in the process of establishing a nationwide network of CDTs for use by ##### cardholders, as well as customers of other financial institutions that participate in certain ATM networks. Customers would use the CDTs to obtain cash advances on their ##### Cards or bank-issued ATM, debit, or credit cards and to withdraw cash from their deposit accounts at their financial institutions. Customers would not be able to make deposits to their deposit accounts.

You request that the Bureau interpret the EFT Act to exclude CDTs from the definition of "electronic funds transfer terminal." Since the CDTs would not accept deposits in Michigan, you state that there would not be concerns about non-banks or out-of-state entities engaging in deposit-taking activities in Michigan. The definition of "electronic funds transfer terminal" (EFT terminal) is found in MCL §488.3(5) and states, in pertinent part:

"Electronic funds transfer terminal" means an information processing device used for the purpose of executing deposit account transactions between financial institutions and their customers by either the direct transmission of electronic impulses or the recording of electronic impulses for delayed processing Electronic funds transfer terminal does not include a device at the time it is used to perform the functions of check guaranty, check authorization, or credit card programs, . . ."

While customers would not make deposits to their accounts through CDTs, they could execute cash withdrawals from their deposit accounts in one or more Michigan financial institutions. When the customer executes a cash withdrawal from his or her deposit account at a CDT, the CDT would be an EFT terminal. At such times, the CDT would be used for the purposes of " . . . executing deposit account transactions between financial institutions and their customers . . .". At times when a customer used a CDT to obtain a cash advance from his or her ##### Card, the CDT

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would not be an EFT terminal. I must conclude, therefore, that a CDT is an EFT terminal under the EFT Act.

If the Bureau determines that ##### may not directly establish and operate CDTs in Michigan under the Michigan Electronic Funds Transfers Act (EFT Act), MCL §488.1 et seq., ##### requests that the Bureau permit it to enter into a "sponsorship arrangement with one or more Michigan financial institutions." Under the arrangement, ##### would "own and operate" the CDTs but a Michigan financial institution would "sponsor" the CDTs by filing any required notices and applications with the Bureau, auditing compliance with applicable laws, and "taking responsibility for any problems that arise with respect to the CDTs." ##### would indemnify the sponsoring financial institutions for any liability that may result from the arrangement.

Except for the authority given to merchants in MCL §488.7 to establish, own, or operate EFT facilities, the EFT Act does not specifically state which types of entities are authorized to "own and operate" ATMs. MCL §488.9 states, "A person may not establish, operate, or make available a funds transfer facility in this state, except as provided in this act." This would appear to mean that ##### lacks the direct authority to establish or operate EFT terminals in Michigan. On the other hand, MCL §488.10 expressly authorizes a financial institution to "make available to its customers 1 or more electronic funds transfer terminals anywhere in this state . . .". This language does not expressly state or appear to require that a financial institution which makes available EFT terminals have an ownership interest in the terminals. I see no objection, therefore, to a Michigan financial institution making available #####-owned and operated CDTs to its customers in Michigan.

Questions regarding this determination may be directed to Russell LaCoursier of my staff at (517)373-8674.

Sincerely,

/ ss /

Patrick M. McQueen
Commissioner

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